



STATE WATER PROJECT CONTRACT EXTENSION PROJECT

Meeting Summary

State Water Project Contract Extension Project

March 6, 2014 10:00 AM – 3:45 PM

Draft Meeting Attendance List

<p><u>California Department of Water Resources Lead Negotiators</u></p> <ul style="list-style-type: none"> • Steve Cohen, California Department of Water Resources • Rob Cooke, California Department of Water Resources • Perla Netto-Brown, California Department of Water Resources • Vera Sandronsky, California Department of Water Resources • Carl Torgersen, California Department of Water Resources • Ralph Torres, California Department of Water Resources 	<ul style="list-style-type: none"> • Ray Stokes, Santa Barbara County/ Central Coast Water Authority • Dana Jacobson, Santa Clara Valley Water District • David Okita, Solano County Water Agency • Steve Wickstrum (by phone), Ventura County Flood Control District
<p><u>State Water Project Contractor Lead Negotiators</u></p> <ul style="list-style-type: none"> • Dan Flory, Antelope Valley – East Kern Water Agency • Steve Peterson (by phone), Alameda County Water District • Mike Wallace, Alameda County Flood Control Water Conservation District, Zone 7 • Paul Gosselin, Butte County • Valerie Pryor, Castaic Lake Water Agency • Mark Krause (by phone), Desert Water Agency • Curtis Creel, Kern County Water Agency • Steve Arakawa, MWD of Southern California • Deven Upadhyay, MWD of Southern California • Kathy Cortner, Mojave Water District • Jon Pernula (by phone), Palmdale Water Agency • Bob Perreault, Plumas County Flood Control & Water Conservation District 	<p><u>California Department of Water Resources Staff</u></p> <ul style="list-style-type: none"> • Ted Alvarez, California Department of Water Resources • Terri Ely, California Department of Water Resources • Avery Estrada, California Department of Water Resources • Scott Jercich, California Department of Water Resources • Spencer Kenner, California Department of Water Resources • Kathie Kishaba, California Department of Water Resources • Chris Martin, California Department of Water Resources • Jeremiah McNeil, California Department of Water Resources • Russell Mills, California Department of Water Resources • Mehdi Mizani, California Department of Water Resources • Dave Paulson, California Department of Water Resources • Nancy Quan, California Department of Water Resources • David Sandino (by phone), California Department of Water Resources

<ul style="list-style-type: none"> • Dena Uding, California Department of Water Resources • Pedro Villalobos, California Department of Water Resources • Lisa Toms, California Department of Water Resources <p><u>DWR Consultants for Contract Extension</u></p> <ul style="list-style-type: none"> • Tom Berliner, Consultant • Erick Cooke (by phone), Environmental Science Associates • Doug Montague, Montague, DeRose and Associates <p><u>State Water Project Contractors, and SWC, Inc.</u></p> <ul style="list-style-type: none"> • Bruce Alpert (phone), Butte County • Josh Nelson, Best, Best & Krieger LLP/Crestline-Lake Arrowhead Water Agency • Ted Page, Kern County Water Agency • Amelia Minaberrigarai (by phone), Kern County Water Agency • Jaime Dalida, MWD of Southern California • Kevin Donhoff, MWD of Southern California • David Reukema, MWD of Southern California 	<ul style="list-style-type: none"> • John Schlotterbeck (by phone), MWD of Southern California • Matt Naftaly (by phone), Santa Barbara County Water Agency • Theresa Lightle, State Water Contractors, Inc. • Stan Powell, State Water Contractors, Inc. • Julie Ramsay, State Water Contractors, Inc. • Chantal Ouellet (by phone), Tulare Lake Basin Water Storage District • Lisa Kern (by phone), Ventura County Flood Control District <p><u>Public</u></p> <ul style="list-style-type: none"> • Dan McDaniel (by phone), Central Delta Water Agency • Debbie Espe, San Diego Water Authority <p><u>Facilitation Team</u></p> <ul style="list-style-type: none"> • Macie Eng, Kearns & West • Kelsey Rugani, Kearns & West • Anna West, Kearns & West
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I. Welcome/Introductions

There were roundtable introductions of the negotiation teams and staff attending in person and by phone. Members of the public were given the opportunity to introduce themselves.

II. Meeting Overview

Anna West welcomed everyone to the 22nd negotiation session. She reviewed the ground rules the action list and asked if there are additional edits to the February 26th negotiation session meeting summary. Hearing no objections, the meeting summary was approved and will be posted to the website.

III. Objectives Discussion

Regarding Objective 3D: Billing Authorization, David Okita, Solano County Water Agency, asked the Department to report on whether a Federal Energy Regulatory Commission (FERC) license or another federal statute would require charging the SWP Contractors for fish and wildlife enhancements, or recreation, including capital and operations and maintenance (O&M) costs. Steve Cohen, Department of Water Resources, responded that although he is not familiar with the Oroville settlement, the Department does not plan to charge the Contractors for fish and wildlife enhancements and recreation, capital and O&M costs. Steve Cohen explained that the Department has not charged the Contractors for these expenditures or, if the Department has, it

has been brought to the Department's attention and it was fixed. He explained that the Department does not plan to charge the Contractors for these types of costs currently or in the future. Deven Upadhyay, MWD of Southern California, explained that he does not need to decipher in this process what is determined to be mitigation and what is enhancement. He suggested adding language to the contract stating that DWR will not seek reimbursement for recreation, including capital and O&M, and fish and wildlife enhancement costs. Steve Cohen responded that because of the long-term nature of the Contract, the Department is unsure about adding that language.

Carl Torgersen, Department of Water Resources, shared that the Department would continue to not charge the Contractors for those types of costs. He mentioned that there may be a scenario in the future where the Contractors receive more authority over the State Water Project because it is mandated by the State Legislature. In this case, the Contractors may be charged for recreation costs in return for more control.

Carl Torgersen said that for the past 55 years, the Department has not charged the Contractors for O&M costs. He asked what the Contractors' concerns were with including the originally proposed Davis-Dolwig language. David Okita said that the Contractors request clarity on whether "development" includes both capital and O&M costs. Carl said that the Department does not want to edit the actual language of the statute. Deven Upadhyay asked if the Department would feel comfortable with adding a clarification sentence. Carl said that the Department would discuss in caucus, but that they may be okay with the original Davis-Dolwig language and with adding in a definition of development as long as it is clearly distinct from the Davis Dolwig language.

David Okita then reviewed the latest version of the SWRDS Finance Committee Charter. David explained that the Contractors are fine with all of DWR's edits except for the deletion of the seventh recital. David said that the Contractors would like to retain the seventh recital because it connects the Charter to the Contract. If the Contract is a stand-alone agreement and not a part of the Contract, the Contractors would like to link the two documents together. Carl Torgersen asked how the Contractors define "joint oversight" in the seventh recital. David responded that the Contractors see the Committee as having joint oversight since both DWR and the Contractors participate. Carl asked what the Contractors see the Committee overseeing. Curtis Creel, Kern County Water Agency, answered that the Committee will oversee recommendations made to the Director. David suggested that the word "oversight" can be changed to "the development of financial policy recommendations." Carl said that the Department is in agreement with this change.

David Okita then suggested that the next proposed change is under Section I. Recommendations to the DWR Director. He explained that since the Department did not want to mandate the Director to make written decisions the Contractors edited the section to reflect that the Director can issue decisions in either written format or orally. Carl Torgersen responded that in almost all cases, the Director will provide written responses except when issues relate to personnel.

David Okita then reviewed the Contractors proposed edits to Objective 2G: Reporting Requirements with some text in the charter and the Principles moved to the Contract Offer document. David explained that the Contractors propose inserting the principles within the Contract since they apply to technical reports that are beyond the scope of the Finance

Committee. David explained that technical reports apply to all of SWRDS and not all detailed reports will necessarily go to the Finance Committee. Carl Torgersen asked why, since the Finance Committee can make recommendations on all SWRDS activities, the principles go beyond the scope of the Committee. David responded that the Finance Committee will not discuss detailed financial reports unless there is a connection to a policy. David thinks all of SWRDS could utilize the reporting principles. Carl shared that technical committees could utilize the principles as well and that all reports would likely be seen by the Finance Committee. He added that if the principles are more philosophical and not prescriptive, the Department may be willing to consider including them in the Contract. Carl also wanted to make sure that the Finance Committee will not be approving budgets or discussing detailed aspects of day-to-day operations. Deven Upadhyay shared that the Contractors do not want to prohibit financial information from coming to the Committee and affirmed that the Committee will not be discussing detailed, daily operations of SWRDS. Steve Cohen said that the Department will review the language proposed on Reporting in the Offer and the Charter during caucus.

David Okita then reviewed the proposed dispute resolution language within the Charter. He shared that the Contractors think the language is necessary. David clarified that the types of disputes the Contractors envision occurring will be limited and will not involve recommendations for the Director, but could include if the Committee cannot decide on a work plan or if the Department or the Contractors are not regularly participating in the Committee. Carl Torgersen said that the Department is not willing to include dispute resolution in the Charter. He explained that the Department is committed to hiring the Chief Financial Manager (CFM) and to implementing work plans. In the case of a dispute, Carl said that litigation could be used. He explained that it is likely that a judge would suggest that both the Contractors and the Department go to mediation to address the issue.

David asked if there is a practical option for the Contractors or DWR before litigation. David suggested that the Contractors could bring the issue to the Director. Carl responded that speaking to the Director would be an effective way to resolve disputes. Carl envisions that the major issues may be regarding non-participation. David said that the Contractors will discuss dispute resolution in caucus. He noted that if dispute resolution is amended or removed, the Exhaustion of Remedies section would also have to be amended or deleted.

David Okita said that the Contractors are in agreement with the Department's proposed language on Successors and Assigns in the Charter.

David Okita then walked through the Contractors' edits to the Offer document on Objective 2F: Cost Recovery (highlighted in red below):

"If the Department proposes to not charge any Contractor the full amount that the Department is entitled to charge the Contractor under the contract, DWR shall bring a written proposal to the Finance Committee for purposes of developing a recommendation to the Director regarding the proposal. DWR shall submit such proposal in writing to the Finance Committee 90 days in advance of the Director issuing any decision and within such 90 day period the Finance Committee shall provide the Director with a recommendation regarding such proposal. Such proposals will comply with the structure set out in II.D.2 of the SWRDS Finance Committee Charter."

Carl Torgersen responded that the language added seemed redundant, but that the Department will discuss the proposed changes in caucus.

Continuing on the Offer document, David Okita shared that the Contractors are fine with DWR's edits to Objective 3A: Billing Simplification. Steve Cohen explained that the Freeze-Go date will be the January 1st of the first calendar year 18 months after the Contract takes effect. The Department included the at-least 18 month timeframe to provide time for instituting the new billing system. The Department and the Contractors decided to add "On and After the Freeze-Go Date" throughout Objective 3A for clarity.

Regarding the 18-month time period between Contract execution and Freeze-Go implementation, Ray Stokes asked if these edits mean that when the contract becomes effective, will it preclude DWR from collecting until the Freeze-Go date. Steve Cohen clarified that it would be once the contract is effective. Ray explained that we do not want to limit the ability to issue long-term bonds. Ray said that the Department could issue 30-year bonds under a Pay-As-You-Go system but not under Freeze-Go. Curtis Creel added that he assumed that any bond issuance prior to Freeze-Go implementation would be done under the existing method, which Perla Netto-Brown, DWR, agreed with. The Contractors and Department agreed that the Technical Committee can address this topic.

Regarding Objective 4: BDCP/DHCCP Cost Allocation, Carl Torgersen shared that the Director sent a letter in response to the Contractors' letter on Cost Allocation. The Department is still developing a response to the letter from Plumas County Flood Control and Water Conservation District. Bob Perreault, Plumas County Flood Control and Water Conservation District, explained that Plumas has assembled some additional suggestions to address Objective 4. He distributed a document that includes the following:

1. The Public Negotiating Meetings continue with a routine every-other-week schedule.
2. The current negotiating process continues, including finalization of Objectives 1, 2 and as an objective is finalized, it is forwarded to the AIP drafting team.
3. DWR selects a Facilitator to focus on BDCP cost allocations, with Objective 4 being the first and only topic to be addressed in Public Negotiating Meeting(s) in regard to BDCP cost allocations.
4. Once Objective 4 is finalized, it is forwarded to the AIP drafting team.
5. The Public Negotiating Meetings continue with focus on BDCP cost allocations for the remaining contractors that are not included in Objective 4.
6. Once BDCP cost allocations for the remaining contractors (referenced above) is finalized, it is forwarded to the AIP drafting team.
7. If the BDCP cost allocations for the remaining contractors becomes too lengthy, then the process can be split at that time to prepare environmental documentation for the first 4 objectives and a second environmental document can be prepared for the BDCP cost allocations.

Bob explained that Plumas would like to extend this process on Contract Extension finishing up Objectives 1, 2 and 3, and then taking up Objective 4 to see if it also can be completed. Then, if it turns out that Objective 4 cannot be addressed in the short-term, it then could go to the longer BDCP process.

Paul Gosselin, Butte County, said that Butte is considering the AIP package to include Objectives 1, 2, 3 and 4, and will see the package as incomplete if a compromise is not found on Objective 4. Paul stated that Butte County will not sign the AIP if Objective 4 is not included.

Carl Torgersen suggested that both the Department and the Contractors need to review the document during caucus. Carl noted that the Department may have different people involved and will need time to prepare for the BDCP cost allocation process. Rob Cooke, Department of Water Resources, asked if Plumas suggests including all four objectives in the environmental review process for Contract Extension. Bob said yes. He added that if cost allocation discussions become long enough that they affect the Contract Extension Process, it may be necessary to move the topic to a second effort.

The group agreed that all remaining items, except term, are process related. There was a break for caucuses.

IV. Objectives Discussion Continued

David Okita shared that the Contractors prepared draft language on #7 under Objective 3A: Billing Simplification. Carl Torgersen suggested that the Technical Team can review this draft language. David Okita said that the Contractors agree and it was noted in the latest version of the Contract Extension Offer.

David Okita then reviewed that in the Offer shared that at the beginning of Objective 2G: Reporting Requirements there were originally two proposed paragraphs. The Contractors propose moving the following paragraph to the end of the Objective 2G language for clarification.

The SWRDS Finance Committee is charged with providing financial policy recommendations to the DWR Director, and the DWR Director has final discretion on whether or not to accept the recommendations. While the SWRDS Finance Committee is not charged with reviewing the content of financial reports, timely and accurate financial reporting and financial management reporting provides technical committees access to useful information that can be used to formulate proposals on financial policy matters that may be brought to the SWRDS Finance Committee.

Carl Torgersen said that the Department was fine with moving the paragraph. Carl Torgersen then suggested editing the title of this section to include “principles” rather than “requirements”. David Okita said the Contractors were fine with that edit and suggested adding SWRDS to the title as well. The agreed upon Objective title is Objective 2G: SWRDS Reporting Principles.

Carl Torgersen proposed having the 2G: SWRDS Reporting Principles as an exhibit to the Contract. David Okita suggested that as long as the language is part of the Contract the Contractors may be OK with it as an exhibit. Steve Cohen elaborated that the language would be more appropriate as an exhibit instead of a Contract item; it doesn’t have the “meat” of a contract item. The Contractors and the Department agreed that this is a technicality and

therefore to let the AIP Review Team decide where to insert the Principles language – either as an exhibit to the contract, or directly in the contract.

Steve Cohen reviewed DWR's edits to Objective 3D: Billing Authorization. Steve explained that the Department suggests adding a footnote to state *"Development of public recreation' has been interpreted by DWR to apply to recreation capital and operation and maintenance."* David Okita responded that the Contractors are concerned with the interpretation of "development" changing over time. David explained that the Contractors suggest having a separate sentence or paragraph instead of a footnote. Deven Upadhyay added that the Contractors' intent is to not only reference the Statute, but to make the Department not charging the Contractors for fish and wildlife enhancement and recreation capital and O&M costs a contractual commitment. Carl affirmed that by putting this additional language in this contract it is a contractual commitment.

Steve Cohen then suggested editing the sentence to state *"In the Department's administration of the Contract, 'Development of public recreation' includes recreation capital and operation and maintenance."*

The Contractors took a caucus.

David Okita suggested editing the sentence slightly to state *"In administering this Contract 'development of public recreation' shall include recreation capital and operation and maintenance."* The Department and the Contractors agreed to this language.

Steve Cohen then reviewed DWR's edits to the seventh recital in the latest version of the SWRDS Finance Committee Charter. The Department proposed adding *"and entering into this Agreement is part of the consideration for entering into the Contract Amendments."* David Okita said that the Contractors are fine with the additional language.

Carl Torgersen stated that he expects that some AIPs agreed to will be inserted into the Contract Amendment as currently written. For example, Objective 2G: SWRDS Reporting Principles and Objective 3D: Davis Dolwig.

Regarding Objective 4, David Okita said that the Contractors would like in the Department's letter response to Plumas to include a time table for when the BDCP cost allocation negotiations in public are set to begin and that the issues brought up by Butte County, Plumas County Flood Control and Water Conservation District, and the City of Yuba City will be addressed first in that process. Carl Torgersen responded that DWR has named Ted Alvarez as Program Manager for the BDCP cost allocation negotiation process. He added that the Department, in its letter response to Plumas County Flood Control and Water Conservation Strategy, will commit that the first objective of the BDCP cost allocation process will address the topic raised for Butte, Plumas and Yuba City, and the letter will address the timing for the negotiation process. Carl explained that both topics will be addressed in the DWR letter response to Plumas. Bob Perreault shared that Plumas is disappointed that their concerns could not be addressed within Contract Extension, but will participate in the BDCP cost allocation negotiations. Paul Gosselin echoed Bob's sentiment.

The Contractors took a caucus.

David Okita suggested that the Contractors have a package proposal to the Department on all outstanding topics. David explained that the Contractors propose:

- For Objective 1: Term having the Contract Term going 75 years to 2035 until 2090.
- Delete dispute resolution from the SWRDS Finance Committee Charter.
- Delete in Objective 2B: Accounts, B. SWRDS Support Account (SSA) Backstop.
- Delete in Objective 1: A., Item 2 references to the Burns-Porter Act.
- Include Objective 2G: SWRDS Reporting Principles within the Contract.

David Okita also shared that the Contractors will provide language to be added to the Charter on how the five SWRDS Finance Committee representatives will be determined. He shared that the Contractors will organize by geography to select its five representatives: Northern Contractors (including North Delta and Bay Area Contractors), San Joaquin Contractors, Metropolitan Water District of Southern California, West Branch Contractors and East Branch Contractors.

The Department then caucused.

Carl Torgersen then shared that the Department is okay with the Contractors proposal with two changes. The Department agrees to include the Objective 2G: SWRDS Reporting Principles in the Contract as long as it is included as an exhibit to the contract. He added that the Department counter-proposes that the Contract Term be 50 years from 2035 to 2085.

The Contractors took a caucus.

David Okita explained that the Contractors agree with the Department on these last two negotiation items. The group applauded having achieved Agreements in Principle.

V. Next Steps

The group then reviewed various process items. The Department selected Vera Sandronsky, Stan Dirks, Steve Cohen, Perla Netto-Brown and Rob Cooke to serve on the AIP Review Team. The SWP Contractors selected Stefanie Morris, Valerie Pryor, John Schlotterbeck, Kevin Donhoff and David Okita to serve on the AIP Review Team.

Both the Technical Team and the AIP Review Team will begin meeting in late March and early April. The goal is to complete the full AIP Package by April 8, 2014. Curtis Creel, Kern County Water Agency, suggested that the AIP team members can determine if the edits are technical, or if they need to come back for additional negotiation with this group. The group agreed that the goal is to have a final package for distribution by April 8th.

Then there was a discussion about collecting signatures for the AIP package. Ray Stokes asked if the Department is expecting all 29 contractors to sign the AIP package. Carl Torgersen explained that the AIP package is not a binding document. Deven Upadhyay explained that Metropolitan's plan is to have Jeff Kightlinger, the General Manager, sign the AIP package, and the Board will formally approve the package after the environmental review process is complete. Paul Gosselin stated that Butte County will not sign the AIP if Objective 4 is not included. Steve Cohen added that the AIPs will serve as the basis for the environmental review process and could change as a

result of the process. He noted that there is a provision in the AIP package that addresses this. Steve explained that the more Contractors that sign the AIP package, the easier it may be for the environmental review process. Anna West explained that it is hoped that we will gather 29 signatures of the AIPs, either by General Managers or whomever is appropriate for the Contractors as well as the Director for the Department.

VI. Public Comment

There were no public comments.

VII. Adjourn

The meeting was adjourned.

Action Items	Responsibility Due Date
1. Draft March 6 2014 negotiation session meeting summary.	K&W ASAP
SWP Contractors to provide language on Contractors' selection of its five representatives based on geography.	DWR and SWP Contractors ASAP
3. Technical Team meetings on March 18 th from 2:30 – 5:00pm and tentatively on April 1 st from 1:00 – 4:00pm, if needed.	DWR and SWP Contractors 4/1
4. AIP Review Team meeting to in mid- to late- March. Vera Sandronsky and Stefanie Morris to coordinate.	DWR and SWP Contractors 4/8
5. DWR to send a letter response to the Plumas County letter.	DWR ASAP
6. K&W to post final documents to the website.	K&W ASAP